

# STRATA COLLECTIONS AND ESTATES

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The passing of an owner of a strata lot in British Columbia could result in delays in the payment of strata fees, special levies, and other monies owing to a strata corporation. This article contains a basic discussion about collecting strata fees and special levies when an owner dies. Some of the implications of the *Wills, Estates and Succession Act* (the "WESA"), which came into force on March 31, 2014, and the *Limitation Act*, which came into force on June 1, 2013, will be examined.

## Who to Contact

It is helpful to ask each owner to provide emergency contact information. The strata corporation's privacy policy should allow council members and the strata manager to use this contact information when there is an emergency involving person or property and also with respect to determining the appropriate contact person upon the death of the owner. The emergency contact person may be able to tell you who will be handling the estate or provide you with further contact information for the next of kin.

If there is no emergency contact information provided and no other way of easily locating the deceased owner's next of kin, it is possible to search the court registry online to see if anyone has applied for probate of the estate. Also, for wills registered in BC, a Wills Notice Search will show the last known location of the will. Another option is to contact the Public Guardian and Trustee of British Columbia to see if they are able to provide information.

## Useful Terms

An "executor" is the personal representative of the deceased who is appointed under a will. When a person dies "testate" it means that the person that died had a valid will.

An "administrator" is appointed by the Court to be the personal representative when the deceased dies without a will. When a person dies "intestate" it means that the person died without a will.

An "administrator with will annexed" is the representative appointed when the deceased dies with a will but the will does not appoint an Executor.

Both an executor and an administrator are often referred to as a "personal representative" which will be the term used in the balance of this article. Such personal representatives apply to Court for what is described as a "representation grant" under the WESA.

## Consider who is on Title

The number of owners of a strata lot and the manner in which ownership is registered on title at the land title office impact whether strata fees and any special levies will be paid for after an owner dies.

When title to a strata lot is held by two or more owners as joint tenants, the surviving joint tenant(s) automatically assume(s) ownership of the deceased's interest as if the transfer took place one second prior to the death of the deceased. A property owned in this manner eliminates the need for probate. The surviving owner(s) remain on title and the interest of the deceased is transferred to the survivor(s) upon the filing of a Form 17, together with a copy of the death certificate at the land title office. This is a simple and relatively inexpensive process. This can be an effective tool for estate planning purposes.

A joint tenancy is commonly, but not always, used when spouses own property together. There may be little disruption in the payment of strata fees, special levies, and other charges owing to the strata corporation upon the death of one of the joint tenants. The remaining owner continues to be responsible in the ordinary course for the payment of common expenses.

When title is held as tenants in common, the property of a deceased tenant in common results in that owner's interest in the strata lot being distributed in accordance with the terms of his or her will or in accordance with the rules for distribution when an owner dies intestate. It is also likely in this situation that the payments owing to the strata corporation will not be delayed, because there is at least one consistent owner left on title.

However, when there is only one owner, the title of the strata lot will first be transmitted to the personal representative and later transferred to one or more beneficiaries. This process takes time and could result in payments to the strata corporation being delayed. The collection process needs to be managed by or on behalf of the strata corporation to ensure that the right to collect money does not become "statute barred" as a result of the passage of time.

### **Distribution of Estate Assets**

Payments to the strata corporation may be delayed until a representation grant is issued and the strata lot is sold. The strata corporation will then be paid upon the sale of the strata lot. Alternatively, the payment of strata fees may be delayed until a representation grant is issued and the strata lot is transmitted to one or more beneficiaries. The distribution of estate assets often takes over a year. Section 155 of the *WESA* provides that estate assets should not be distributed for 210 days following issuance of the representation grant, unless consents are obtained from all beneficiaries and intestate heirs or there is a court order. Under section 69(1) of the *WESA*, title to a strata lot will not generally be transferred to a beneficiary under the will until the 210 day period expires. In addition, payment to the strata corporation may be further delayed if a close relative of the deceased challenges a distribution under the will in court.

### **Time Limitations for Collections**

The *Limitation Act* provides a basic limitation period of two years. For instance, strata fees that became due and owing on or after June 1, 2013 are subject to a two year limitation period after the claim is "discovered", which in the case of strata fees, would likely be the date they become due. Strata fees that became due and owing prior to June 1, 2013 are generally subject to a limitation period that runs six years from the date the strata fee or special levy payment became due. If a limitation period expires, then the strata corporation's right to collect the strata fees using judicial and non-judicial remedies is extinguished. Commencing an action in court or commencing an arbitration are two activities that preserve a limitation period.

The personal representative has an obligation to not pay out any claims by potential creditors that are statute barred, including claims extinguished because the limitation period has expired.

### **How to Extend the Time for Collection**

Time limits for collections can be extended under the *Limitation Act* by way of an acknowledgement or by way of a payment. A personal representative acknowledging the debt in writing and signing the acknowledgement will extend the limitation period. It is helpful to ask for an acknowledgement regarding when the personal representative intends to make arrangements for payment to the strata corporation. Steps should be taken to ensure that the limitation period does not expire prior to payment. Be sure the acknowledgement meets the requirements of section 24 of the *Limitation Act*.

The limitation period may also be extended when a payment is made. The clock for the limitation period resets from the date of the acknowledgment or the date of the payment, as the case may be.

If your council is faced with a collection situation involving an estate, it is recommended that you seek legal advice to ensure that you act appropriately and respectfully regarding the estate and that the rights of the strata corporation are preserved.